

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. CV 10-0815 JC/WDS
CR 07-1877 JC

MICHAEL DOMINIC LUCERO,

Defendant.

ORDER TO SHOW CAUSE

This matter is before the Court on Defendant's Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside, Or Correct Sentence (CV Doc. 1; CR Doc. 31) filed on August 31, 2010. The Court entered judgment on Defendant's conviction on September 23, 2008 (CR Doc. 30). Defendant did not appeal his conviction or sentence. He then filed his § 2255 motion on August 31, 2010, almost two years after entry of judgment.

Defendant will be required to show cause why his motion should not be dismissed as untimely. *See* 28 U.S.C. § 2255 R. 4(b). The applicable one-year limitation period in § 2255 has expired, *see United States v. Willis*, 202 F.3d 1279, 1280 (10th Cir. 2000), and Defendant's § 2255 motion must be dismissed unless he presents grounds for tolling, *see United States v. Cordova*, No. 99-1306, 1999 WL 1136759, at **1 (10th Cir. Dec 13, 1999). The Court raises the time bar to Defendant's § 2255 motion *sua sponte* and will allow him an opportunity to respond. *See Hare v. Ray*, No. 00-6143, 2000 WL 1335428, at **1 (10th Cir. Sept. 15, 2000) (noting that timeliness of § 2254 petition was raised *sua sponte* and allowing response); *Hines v. United States*, 971 F.2d 506, 507-09 (10th Cir. 1992) (same for procedural default in § 2255 proceeding). Failure to respond to

this Order or otherwise show cause may result in dismissal of the § 2255 motion without further notice.

IT IS THEREFORE ORDERED that, within thirty (30) days from entry of this order, Defendant file a response to this Order showing cause, if any, why his § 2255 motion should not be dismissed as untimely.



UNITED STATES MAGISTRATE JUDGE